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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,422	09/12/2005	Silvia Bader	7-4220	8054

22209 7590 10/03/2006

HOOKER & HABIB, P.C.
100 CHESTNUT STREET
SUITE 304
HARRISBURG, PA 17101

EXAMINER

FLANIGAN, ALLEN J

ART UNIT	PAPER NUMBER
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3753.

DATE MAILED: 10/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/522,422	Applicant(s) BADER, SILVIA	
	Examiner Allen J. Flanigan	Art Unit 3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1. ☐ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

The disclosure is objected to because of the following informalities:

The discussion of the relative heat efficiency of the disclosed polished surface appears somewhat misleading. The disclosure suggests that a highly reflective, polished metal surface presents a relatively efficient heating (heat exchange) surface. Actually, the emissivity (and thus the radiant heat exchange efficiency) of polished, highly reflective surfaces is poor. Moreover, in comparing the subject invention with conventional "chromed steel" heating bodies, it is not clear whether the claims being made are valid. "Chromed steel" is an extremely broad term that would cover everything from highly polished stainless steel containing a very thin passivation layer on the surface to stainless steel or metals coated with chromium that are heat treated for a period of time to form a much thicker chromium oxide layer that renders the surface quite highly emissive and thus very efficient with respect to radiation heat transfer (see e.g. lines 54-57 of column 5 of Klostermann et al). Thus, claims that the disclosed highly reflective surface would outperform a "chromed" steel surface having such a well-formed oxide layer would be incorrect. Applicant should revise the specification to clarify that it is low emissivity, non oxidized chrome plated surfaces that are potentially poorer in heat transfer efficiency than the disclosed invention.

Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1-3, the phrase "especially" (claim 1), "in particular" (claim 2), "that is" (claim 3) renders these claims indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d). Thus, it is not clear whether claim 1 is limited to aluminum or not; whether claim 3 is limited to anodization using Eloxan or encompasses other anodization processes, etc.

Due to the above-noted indefiniteness, comparison of the claimed subject matter with the prior art is problematic. As best as can be understood from the claims as presented in their current form, they are rejected as follows:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary

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skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 2 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bosworth.

Bosworth is applied due to the applicant not having perfected the claim of priority by filing an English translation of the priority document. See MPEP 1895.01. Bosworth discloses a decorative towel rack with liquid heated tubes for warming towels placed thereon; the tube surfaces are disclosed as being decorative, and may be "polished" as well as chrome plated (first full paragraph of column 4).

The rejection is made alternately under sections 102 or 103 since it is not clear whether Bosworth clearly teaches polishing the decorative tubes 12 to the degree claimed. Clearly there is nothing critical, technically speaking, regarding the particular range of reflectiveness beyond it's ensuring an aesthetically pleasing, shiny appearance. As noted by the Examiner above, polishing a metal surface makes it a poor emitter, and thus overall will diminish heat transfer efficiency compared to an unpolished (or roughened) bare metal surface. Thus, even if Bosworth does not explicitly suggest a particular degree of reflectivity or shininess to be produced by polishing, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to make the tubes 12 as shiny as desired for aesthetic purposes. Further, note the holding in ***In re Seid*, 73 U.S.P.Q. 431**

(matters relating to ornamentation only which have no mechanical function cannot be relied upon for patentability of a utility patent).

Regarding claim 2, this claim is considered a product by process claim. It would not appear that different methods of polishing would produce structurally different polished surfaces; thus limitations drawn to the intended method of making the claimed body fail to distinguish over the prior art absent a showing that some structural distinction results from the particular processes of making recited.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over British patent #596,135 (hereinafter "the British Patent").

The British Patent is similar in its teachings to Bosworth (a towel airer made of polished metal tubes) and is applied due to the fact that Bosworth is an intervening reference.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bosworth or the British Patent in view of Brantly.

Anodization of metal tubing to provide a decorative finish is well known in the art (see Brantly lines 44-46 of column 4). As both Bosworth and the British patent are concerned with the decorative appearance of their heated towel racks, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to employ any well known decorative surface treatment to the metal tubing.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bosworth or the British Patent in view of Brantly as applied to claim 3 above, further in view of Rudisi et al.

Rudisi et al. teach that it is known to use clear lacquer coatings on anodized metal substrates to provide a "high gloss coating" (lines 20-28 of column 1). Again, since Bosworth and the British Patent are both concerned with the decorative/aesthetic appearance of their metal tubes, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to provide such a conventional coating over the anodized surface taught in Brantly to make the tubing more visually appealing.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Shank shows a polished heat transfer surface inside a heat pipe with capillary grooves. Miller shows a towel warmer. Fieberg et al. teaches clear lacquer coating of aluminum profiles; Powers et al. teaches a sealing process for anodized aluminum employing Eloxan.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allen J. Flanigan whose telephone number is (571) 272-4910. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Keasel can be reached on (571) 272-4929. The fax

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phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Allen J. Flanigan
Primary Examiner
Art Unit 3753

AJF